



POLICE DEPARTMENT CITY OF NEW YORK

October 6, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Michael Whooley
Tax Registry No. 943951
105 Precinct
Disciplinary Case No. 2015-13483

Police Officer Patrick Cabrera
Tax Registry No. 947992
Emergency Service Squad
Disciplinary Case No. 2015-13485

Police Officer Paul Chierico
Tax Registry No. 936344
105 Precinct
Disciplinary Case No. 2015-13482

Police Officer Thomas Fitzgerald
Tax Registry No. 944061
105 Precinct
Disciplinary Case No. 2015-13484

Charges and Specifications:

Disciplinary Case No. 2015-13483

1. Said Police Officer Michael Whooley, on or about July 5, 2014, at approximately 0015 hours, while assigned to the 105th PCT and on duty, in the vicinity of 128th Avenue and 235th Street, Queens County, wrongfully used force, in that he punched Kevin Singh in the head, neck, and back, without police necessity.
P.G. 203-11 - USE OF FORCE
2. Said Police Officer Michael Whooley, on or about July 5, 2014, at approximately 0015 hours, while assigned to the 105th PCT and on duty, in the vicinity of 128th Avenue and 235th Street, Queens County, wrongfully used force, in that he kicked Kevin Singh in the head, neck, and back, without police necessity.
P.G. 203-11 - USE OF FORCE

Disciplinary Case No. 2015-13485

1. Said Police Officer Patrick Cabrera, on or about July 5, 2014, at approximately 0015 hours, while assigned to the 105th PCT and on duty, in the vicinity of 128th Avenue and 235th Street, Queens County, wrongfully used force, in that he punched Kevin Singh in the head, neck, and back, without police necessity.
P.G. 203-11 - USE OF FORCE
2. Said Police Officer Patrick Cabrera, on or about July 5, 2014, at approximately 0015 hours, while assigned to the 105th PCT and on duty, in the vicinity of 128th Avenue and 235th Street, Queens County, wrongfully used force, in that he kicked Kevin Singh in the head, neck, and back, without police necessity.
P.G. 203-11 - USE OF FORCE

Disciplinary Case No. 2015-13482

1. Said Police Officer Paul Chierico, on or about July 5, 2014, at approximately 0015 hours, while assigned to the 105th PCT and on duty, in the vicinity of 128th Avenue and 235th Street, Queens County, wrongfully used force, in that he punched Kevin Singh in the head, neck, and back, without police necessity.
P.G. 203-11 - USE OF FORCE
2. Said Police Officer Paul Chierico, on or about July 5, 2014, at approximately 0015 hours, while assigned to the 105th PCT and on duty, in the vicinity of 128th Avenue and 235th Street, Queens County, wrongfully used force, in that he kicked Kevin Singh in the head, neck, and back, without police necessity.
P.G.203-11, USE OF FORCE
3. Said Police Officer Paul Chierico, on or about July 5, 2014, at approximately 0015 hours, while assigned to the 105th PCT and on duty, in the vicinity of 128th Avenue and 235th Street, Queens County, wrongfully used force, in that he twisted Kevin Singh's thumb, without police necessity.
P.G. 203-11 - USE OF FORCE
4. Said Police Officer Paul Chierico, on or about July 5, 2014, at approximately 0015 hours, while assigned to the 105th PCT and on duty, in the vicinity of 128th Avenue and 235th Street, Queens County, wrongfully used force, in that he threw Kevin Singh to the ground, without police necessity.
PG 203-11, USE OF FORCE
5. Said Police Officer Paul Chierico, on or about July 5, 2014, at approximately 0015 hours, while assigned to the 105th PCT and on duty, in the vicinity of 128th Avenue and 235th Street, Queens County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that he damaged Kevin Singh's property.
P.G. 203-10 Page 1, Paragraph 5 - PUBLIC CONTACT- PROHIBITED
CONDUCT

6. Said Police Officer Paul Chierico, on or about July 5, 2014, at approximately 0015 hours, while assigned to the 105th PCT and on duty, in the vicinity of 105th PCT Station House, Queens County, abused his authority as a member of the New York City Police Department, in that he arrested Kevin Singh without sufficient legal authority.
P.G. 208-1, Page 1, Paragraph 3 - LAW OF ARREST

Disciplinary Case No. 2015-13484

1. Said Police Officer Thomas Fitzgerald, on or about July 5, 2014, at approximately 0015 hours, while assigned to the 105th PCT and on duty, in the vicinity of 128th Avenue and 235th Street, Queens County, wrongfully used force, in that he punched Kevin Singh in the head, neck, and back, without police necessity.
P.G. 203-11 - USE OF FORCE
2. Said Police Officer Thomas Fitzgerald, on or about July 5, 2014, at approximately 0015 hours, while assigned to the 105th PCT and on duty, in the vicinity of 128th Avenue and 235th Street, Queens County, wrongfully used force, in that he kicked Kevin Singh in the head, neck, and back, without police necessity.
P.G. 203-11 - USE OF FORCE

Appearances:

For CCRB-APU: Heather Cook, Esq.
Civilian Complaint Review Board
100 Church Street, 10th floor
New York, New York 10007

For the Respondents John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street-Suite 640
New York, New York 10038.

Hearing Dates:

July 8 and July 20, 2016

Decision:

Respondent's Whooley, Cabrera and Fitzgerald are Not Guilty.
Respondent Chierico is Not Guilty of Specifications 1, 2, and 3 and Guilty of Specifications 4, 5, and 6.

Trial Commissioner:

ADCT Nancy R. Ryan

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on July 8 and July 20, 2016. Respondent, through their counsel, entered a plea of Not Guilty to the subject charges. CCRB called Kevin Singh and Lorenzo Milliam as witnesses. Respondents testified on their own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondents Whooley, Cabrera and Fitzgerald Not Guilty and I find Respondent Chierico Not Guilty of Specification 1, 2, and 3 and Guilty of Specification 4, 5 and 6.

FINDINGS AND ANALYSIS

It is undisputed that on July 5, 2014, Kevin Singh, a twenty year old resident of Queens at the time, was in the vicinity of 128th Avenue and 235th Street at approximately 12:15 AM. He was driving his father's minivan with a friend, Lorenzo Milliam, as a passenger. They were at the location to pick up two males from a party. When they arrived on the block, there were several marked police cars there. Mr. Singh parked, and after the two males entered his van, police approached. The police were in uniform and had arrived in a marked police car. Respondent Whooley and Respondent Fitzgerald arrived in the area in response to a radio transmission of shots fired. Respondent Whooley approached the driver's window. He asked Mr. Singh if anyone was smoking marijuana in the car. Respondent Whooley then asked Mr. Singh to get out of the car. Mr. Singh complied. The other three occupants were also asked to get out of the car and they also complied.

After they were removed from the car the police searched areas of the van and did not recover any contraband. The police found a knife on Mr. Milliam and took his ID to check for warrants. They had all four occupants get back in the van. Respondent Whooley found no outstanding warrants and was in his car writing out a summons to Mr. Lorenzo for the possession of the knife. At about this time, additional officers including Respondents Chierico and Cabrera, who were in uniform driving an unmarked car, arrived on the block. Respondent Chierico went to Mr. Singh who was seated in the driver's seat and during the course of their encounter, Mr. Singh ended up outside the van on the ground surrounded by Respondent Chierico, Respondent Whooley, Respondent Fitzgerald and Respondent Cabrera. Mr. Singh was placed in handcuffs and taken back to the precinct. Mr. Singh possessed marijuana.

The witnesses presented different versions of the actions which took place between the time Mr. Singh was inside his car after being told to return there by the initial officers on the scene and when he was on the ground outside his car. The charges in this case pertain to that period of time.

According to Mr. Singh, Respondent Chierico, after first consulting with other officers and being told everything was under control, approached him while he was in his van, asked what he was doing with a cellphone, and then demanded the phone. (Tr. 21-22, 64, 68) Mr. Singh refused to give him the phone telling Respondent Chierico that he had no right to take the phone. (Tr. 22) Respondent Chierico then reached his hand inside the van, grabbed Mr. Singh's shirt with his left hand and tried to grab the phone with his right hand. Respondent Chierico, after pulling Mr. Singh by his shirt, was able to grab the phone and he threw it to the ground. (Tr. 23-24, 83-84) Respondent Chierico then attempted to open the van door but it was locked. He tried to pull Mr. Singh through the van window. (Tr. 23) When Mr. Singh was halfway through

the window. Respondent Chierico flicked the lock open, opened the door, pulled Mr. Singh out and threw him against the van. (Tr. 24) Respondent Chierico then threw Mr. Singh to the ground. While he was on the ground with his hand behind his back, Respondent Chierico twisted Mr. Singh's thumb. (Tr. 26) Mr. Singh testified that while Respondent Chierico was twisting his thumb, "a couple of other officers came on top of me and began to start kicking and punching me." (Tr. 27) The kicks and punches were to his back, side ribs, head and arms. (Tr. 27) On cross-examination Mr. Singh testified that it was Respondent Chierico and two other people, based on the number of feet he saw, who were beating him. He never saw who the two people were. (Tr. 89-90) Mr. Singh also on cross-examination denied that he had ever thrown anything out of his van during the incident. (Tr. 65)

After Mr. Singh was handcuffed, Respondent Chierico placed him in his police car. (Tr. 28) On cross-examination Mr. Singh testified that Respondent Chierico told him he had "fucked" with the wrong person and then, while another officer sat next to Mr. Singh in the back of the police car, Respondent Chierico maced Mr. Singh in the eyes. (Tr. 91-92) Mr. Singh testified that he told the desk officer at the precinct that he had been maced but he did not tell him that he had been punched and kicked by officers because he was focusing on his eyes and he had been threatened by Respondent Chierico not to say anything. (Tr. 94-95, 99-100) Mr. Singh testified that Respondent Chierico searched him at the precinct and he volunteered to Respondent Chierico that he had a joint of marijuana in his boxers. (Tr. 29) He was charged with possession of marijuana, disorderly conduct and resisting arrest. (Tr. 29-30) He never got his phone back and bought a new one the next day. (Tr. 34)

After he was released from arraignments, his mother took pictures of his injuries. (CCRB Ex. 1 and 2) He went to the hospital on July 5th at approximately 8:30 PM and had a CT scan.

The records state that there was no clinical indication for a CT scan but that Mr. Singh demanded it. Prior to going to the hospital he had not taken anything for pain. The medical records indicate he had several small contusions and superficial abrasions. The chest area was not tender to palpation. He was discharged and advised to take Tylenol for pain as needed. (CCRB Ex. 3)

Mr. Singh testified that he had never been arrested. (Tr. 53)

Lorenzo Milliam, the front passenger in Mr. Singh's van, also testified about the events leading up to Mr. Singh being on the ground outside his van. According to Mr. Milliam, after a knife had been recovered from him, he and Mr. Singh and the two other males were told to sit in the van while they waited for the return of their IDs. (Tr. 109) During this time an additional police car arrived and three officers exited the car and were conversing next to the car with the first group of police officers. (Tr. 110) Mr. Milliam further testified that, "[m]oments later, I'm not really sure, but the officer [Respondent Chierico] sees that Kevin threw a piece of trash out the window and he asked Kevin, 'Are you stupid? Are you really going to litter in front of an officer?'" (Tr. 111) Respondent Chierico went back to speak to the other officers. Respondent Chierico then came back to Mr. Singh's window and asked Mr. Singh what he was doing. Mr. Milliam testified that Mr. Singh "was puzzled" and responded that they weren't doing anything. Respondent Chierico told Mr. Singh to give him his phone and Mr. Singh said, "why am I giving you my phone? We was already searched and cleared to get back in the vehicle. I didn't do anything wrong. I'm not giving you my phone." (Tr. 112)

Mr. Milliam testified that there was an altercation over the phone. He described Mr. Singh as extending his arm with the phone in his hand towards the passenger seat while Respondent Chierico held Mr. Singh's other arm. He testified that Respondent Chierico made the initial physical contact. (Tr. 112) He described Respondent Chierico's right hand on Mr.

Singh's shirt and his left arm reaching for the phone. He later clarified that he was making assumptions about which hands were placed where. (Tr. 135) Mr. Milliam testified that Respondent Chierico, "was trying to actually extract Kevin from the vehicle through the window..." (Tr. 113) He further testified that they were struggling for a little bit and then when Respondent Chierico got the door unlocked, the door "cracked just a little bit in which half of Kevin's body was outside the window..." (Tr. 113) Once the door was open, Respondent Chierico got the phone out of Mr. Singh's hand while he was still partially in the van and raised the phone over his head before slamming it to the ground. Mr. Milliam testified that he saw Respondent Chierico's knee raise before he stomped on the phone and then went "back to pursuing Kevin." (Tr. 113-14, 128-131)

After the phone was slammed to the ground, Mr. Milliam saw two other officers assist Respondent Chierico in getting Kevin out of the van. One of them was the rear passenger in Respondent Chierico's car. He didn't get a clear view of the second officer but believes he had been in Respondent Chierico's car too. (Tr. 115) He saw Mr. Singh get thrown to the ground in the back of the van. He testified he looked through the rear passenger window and saw about four or five officers restraining Mr. Singh. (Tr. 116)

Mr. Milliam was given a summons for possession of the knife and was allowed to drive Mr. Singh's van away from the scene. (Tr. 117) He was given a few items which had fallen out of Mr. Singh's pocket but was not given the cell phone. (Tr. 117-18) He did not see the cell phone on the ground.

CCRB also introduced into evidence the audio and transcript for an interview of Person A conducted by their investigator. (CCRB Ex. 4) Person A stated that she was outside on the block when she saw about six or seven police pull four males out of a van and search the

van and the males. (CCRB Ex. 4B, 8-12) After the four males got back in the van, she saw a, "detective was just walking, and then he just doubled back and I then seen him open the door and grab the, grab the kid out of the car. " (CCRB Ex. 4B, 13) She stated that the detective grabbed the male's shirt which ripped. (CCRB Ex. 4B, 14-15) She didn't hear anything being said between the officer and the male and didn't see anything she could identify as prompting the officer to grab the male. She described the officer as looking aggressive. (CCRB Ex. 4B, 15-16) She never saw the officer take a phone. (CCRB Ex. 4B, 17) She stated that after the officer pulled the male out he had him up against the car and she heard the male, who she said was not resisting, asking what he did. (CCRB Ex. 4B, 18-19) She said the male wasn't being aggressive at all. (CCRB Ex. 4B, 20) Person A stated that after the officer brought the male to the ground, he was stepping on him and approximately seven cops were jumping on him and hitting him. (CCRB Ex. 4B, 21) She stated that the male was already cuffed when they were jumping on him. (CCRB Ex. 4B, 22) She described the cops as laughing. (CCRB Ex. 4B, 24) After the officer who had pulled the male out of the car got into the back of the unmarked police car with the male, she saw the car shaking, "viciously." (CCRB Ex. 4B, 25)

All four Respondents testified. Respondents Whooley and Fitzgerald were the officers who had the first encounter with Mr. Singh and the other occupants of his van, while Respondents Chierico and Cabrera were the officers who arrived at the scene after the four males had been returned to the van by Respondents Whooley and Fitzgerald.

Respondent Chierico testified that after he arrived at the scene in response to the radio run of shots fired, he saw Respondents Whooley and Fitzgerald but his attention was "diverted" to the driver of the van making "furtive movements" of "reaching underneath the seat numerous times and moving around." (Tr. 247, 258) He doesn't remember the conversation with

Respondents Whooley and Fitzgerald. (Tr. 259) He approached the driver (Mr. Singh) and gave him commands to stop reaching under the seat and moving around. Prior to approaching the driver Respondent Chierico didn't give any other officer on the scene any warning that he thought someone in the van was making furtive movements. (Tr. 259) Respondent Chierico testified that, "As I got right up to the driver's side door, the driver swatted at my face with his left hand." (Tr. 248) Respondent Chierico on cross-examination also testified that Mr. Singh was using profanity. He further testified that Mr. Singh's hand came an inch or two away from Respondent Chierico's face and Respondent Chierico initiated physical contact and grabbed Mr. Singh's hand that he had "swatted" at him. (Tr. 248, 259) Respondent Chierico further testified that as soon as he grabbed Mr. Singh's left hand, Mr. Singh grabbed his right hand and squeezed it very hard. He stated that, "At that point I tried pulling him out of the vehicle, but before that while he was squeezing my right hand, he attempted to pull me into the vehicle." (Tr. 249) He continued in his description of events by testifying that, "At that point there was a struggle. At one point he had almost my full arm into his vehicle, and I was trying to pull him out. He was trying to pull me in. This encounter was going on approximately 10 seconds." He doesn't remember if he got Mr. Singh out of the car through the window or the door, but eventually he did remove him from the van. Respondent Chierico never saw any cellphone in Mr. Singh's hand or in the front driver's area of the van. (Tr. 250, 263-64)

Respondent Chierico testified that once Mr. Singh was outside of the van, he became very combative and they both fell to the ground. (Tr. 251) Respondent Chierico remembers officers aiding him but doesn't remember who the officers were or how many of them were there. (Tr. 251) He testified that he did not have to punch or kick Mr. Singh to get him under control, nor did he see any other officer punch or kick Mr. Singh. (Tr. 251-52) After Mr. Singh

was in handcuffs, Respondent Chierico searched him and he found a bag of marijuana in his jeans pocket. (Tr. 252) Respondent Chierico testified that he and Respondent Cabrera transported Mr. Singh back to the precinct in their police car. He denied ever macing Mr. Singh. (Tr. 254) Mr. Singh was charged with disorderly conduct, resisting arrest and possession of marijuana. (Tr. 257) Respondent Chierico testified that after he lodged Mr. Singh in the cells, he went to the hospital to have his right hand treated. (Tr. 255) He also testified that he ran a check on Mr. Singh and found he had three prior arrests for robbery, criminal trespass, and some type of marijuana offense. (Tr. 256) He does not remember if Mr. Singh had any warrants. (Tr. 277) Respondent Chierico testified that he is being sued by Mr. Singh based on this incident. (Tr. 281)

Respondent Whooley testified that Mr. Singh complied with his instructions during the initial encounter he had with him that evening. (Tr. 164) Respondent Whooley was in his vehicle writing a summons for Mr. Milliam when he saw the driver (Mr. Singh) throw garbage out of his window. He did not do anything, but Respondent Fitzgerald approached Mr. Singh and asked for his ID to run him for warrants since he had littered. (Tr. 168) Respondent Whooley testified that Respondent Fitzgerald returned to their car to run the warrant check. When Respondent Chierico arrived at the scene Respondent Whooley recalls having a brief conversation with him but doesn't remember what it was about. (Tr. 168) While Respondent Whooley was writing out the summons while seated in his car he looked up at one point and noticed a struggle taking place outside the van between Respondent Chierico and Mr. Singh. (Tr. 169) Respondent Whooley testified that he got out of his car and went to the passenger side of the van and told them not to get out of the van. He then went around to the driver's side and went to assist the officers who were trying to handcuff Mr. Singh. (Tr. 169-170) On cross-examination he acknowledged that at the time he jumped in to help arrest Mr. Singh he had no idea what he was being arrested for.

(Tr. 179) He further testified that when he got to the area of the struggle he saw that Mr. Singh had one handcuff on and he grabbed his other wrist and cuffed it. He described Mr. Singh's actions as pulling his arms wrist and body away from the officer. Respondent Whooley testified that after Mr. Singh was arrested he had no further contact with him. (Tr. 170-71, 187) He further testified that he did not see any officer, nor did he, punch or kick Mr. Singh to get him under control. The officers he remembers trying to handcuff Mr. Singh were Respondents Chierico and Fitzgerald. (Tr. 172) He also did not see any broken electronic equipment on the ground where Mr. Singh had been laying, which was about ten to fifteen feet from the van's driver's side front door. (Tr. 173)

Respondent Fitzgerald testified that he searched areas of Mr. Singh's van after the occupants were removed and then returned to the police car where Respondent Whooley was writing a summons. (Tr. 221-22) When he saw garbage being thrown out of the driver's side of the van after the four males were back in the van, he returned to the van and asked Mr. Singh for his ID. Mr. Singh complied with this request. (Tr. 223, 231) When Respondent Fitzgerald went back to the area of his police car for the purpose of checking for warrants, he noticed that Respondent Chierico and Mr. Singh were engaged in a scuffle. He remembers that Respondent Chierico was outside the van at this time but is not sure exactly where Mr. Singh was located. (Tr. 225) Respondent Fitzgerald went to help Respondent Chierico who was on the ground with Mr. Singh. Respondent Fitzgerald tried to secure Mr. Singh's arms which were pressed under his chest. (Tr. 226-27) Respondent Fitzgerald and Respondent Whooley cuffed Mr. Singh. (Tr. 228) Respondent Fitzgerald testified that after Respondent Chierico took Mr. Singh to his police car, he had no further contact with Mr. Singh. (Tr. 228-29) He did not know what Mr. Singh was being arrested for. (Tr. 243) He further testified that he did not punch or kick Mr. Singh nor did

he notice Respondent Whooley kicking or punching Mr. Singh. He also testified in response to counsel's questions that he didn't observe Respondent Chierico punching Mr. Singh in the head, face, neck or back nor did he see Respondent Chierico "intentionally kick" Mr. Singh in the head. (Tr. 229-30) He also didn't remember if he had any conversation with Respondent Chierico prior to Respondent Chierico's involvement with Mr. Singh. (Tr. 223)

Respondent Cabrera testified that he arrived at the scene with Respondent Chierico and after consulting with Respondents Whooley and Fitzgerald and ascertaining that they were okay, he got back into his vehicle to move it to a tactically safe position while Respondent Chierico remained outside the vehicle. (Tr. 285-86) After backing the police car up and parking it, Respondent Cabrera observed Respondent Chierico struggling with the driver of the van. (Tr. 286) He does not know how Mr. Singh was taken out of the van nor did he know at the time what Mr. Singh was being arrested for. (Tr. 294, 297) Respondent Cabrera testified that he went to aid Respondent Chierico as it appeared the male was resisting arrest. He further testified that he did not punch or kick Mr. Singh, nor did he see Respondent Chierico or the other officers punching or kicking him. (Tr. 287-88) He further testified that he did not see any cell phones in the vicinity of where Respondent Chierico and the driver were on the ground. (Tr. 287) After Mr. Singh was handcuffed, Respondent sat in the back seat of the police vehicle with him. (Tr. 289) Respondent Cabrera testified that Respondent Chierico did not mace Mr. Singh in the police car and stated that if mace had been used in the police car he would have been injured himself since he was sitting so close to Mr. Singh. (Tr. 289-90) Respondent Cabrera testified that he had no further contact with Mr. Singh after he was brought to the precinct. ((Tr. 291)

Respondents Fitzgerald, Cabrera, and Whooley are each charged with wrongfully using force in that they punched and kicked Mr. Singh in the head, neck, and back without police

necessity. Mr. Singh could not identify any of these officers as being the two officers who in addition to Respondent Chierico he claimed punched and kicked him. Each of these Respondents, while admitting that they did go to the aid of Respondent Chierico when they saw him struggling with Mr. Singh, denied that they punched and kicked Mr. Singh. I credit their testimony on this issue.

First of all, Mr. Singh who says he did tell the officer behind the desk that he had been maced did not tell that officer that he had been punched and kicked. While it may be understandable that he was afraid to report any injury to the desk officer, it does not make sense that he would accuse the officers of macing him, but not also report the beating he supposedly received from them.

Also, if Mr. Singh had in fact been punched and kicked by this many police officers, it is more likely than not that he would have sustained more serious injuries. While he does appear to have scrapes and abrasions in the photos which were introduced into evidence, and these scrapes and bruises were described in the medical records, it is important to note that he did not even take any pain medication before going to the hospital some eight hours after the incident. Nor did the medical personnel believe he needed any type of CT scan. He was discharged and simply told to go home and take Tylenol, if needed. It therefore seems his injuries are more likely than not consistent with the description provided by the Respondents of a struggle taking place on the ground during their attempts to handcuff him, as opposed to a group of three officers punching and kicking him in the head, neck and body.

The other witness in this case, Mr. Milliam, and the hearsay statement of Person A also do not provide corroboration for Mr. Singh's version of events regarding the punching and kicking. Mr. Milliam could not see what took place after Mr. Singh went to the ground. (Tr. 116)

Person A's hearsay statement describing seven officers "stomping" on "probably his head and stuff," similarly lacks support in the medical records. For that reason, and because it could not be tested with cross-examination, which would have allowed defense counsel to probe for any biases or other details which pertain to the reliability of Person A's observations, the statement has not been credited.

As CCRB has not proven by the preponderance of the credible evidence that these three Respondents, Cabrera, Fitzgerald, and Whooley, punched and kicked Mr. Singh, I find them Not Guilty of the charges against them.

Respondent Chierico is charged with six specifications. Unlike his testimony about the other three Respondents, Mr. Singh did specifically identify Respondent Chierico as being one of the three officers who were punching and kicking him after he went to the ground. Under the same analysis provided above, I find that it has not been proven by a preponderance of the credible evidence that Mr. Singh was punched and kicked in the head, neck and ribs by any officer and therefore I find Respondent Chierico Not Guilty of Specifications 1 and 2 of the charges against him.

Specification 3 charges Respondent Chierico with twisting Mr. Singh's thumb without police necessity. In his testimony, Mr. Singh describes having his thumb twisted behind his back while he was laying on the ground and the other officers were on top of him. (Tr. 27) He further testified that he wasn't able to see these officers because he was face down. Since he wasn't able to see these officers, it seems more likely than not that he could not see who was twisting his thumb behind his back. I therefore find that the CCRB has not proven by a preponderance of the credible evidence that it was Respondent Chierico who twisted Mr. Singh's thumb. Respondent Chierico is Not Guilty of Specification 3.

Specifications 4, 5, and 6 charge Respondent Chierico with using unnecessary force in that he threw Mr. Singh to the ground without police necessity, damaged his phone and arrested him without sufficient legal authority. Mr. Singh and Respondent Chierico agree that Respondent Chierico pulled him out of the van. They do not agree about what lead up to this event. They also do not agree as to how Mr. Singh ended up being on the ground and whether or not Mr. Singh had a cell phone in his hand before he was removed from the van. The determination of what happened during the time frame starting with Respondent Chierico approaching the van and ending with his arrest rests on an evaluation of the credibility of Mr. Singh and Respondent Chierico.

Unfortunately, in this case both Mr. Singh and Respondent Chierico have seemed less than truthful in certain portions of their testimony. For example, Mr. Singh's testimony that he was maced while sitting right next to another police officer in a police car does not seem plausible nor does his testimony concerning being punched and kicked by three officers, which is belied by the medical records. On the other hand, Respondent Chierico's claim that he can now remember what he found on Mr. Singh's arrest record at the time he arrested him when he can't remember if he had any warrants at the time and can't remember other significant details of the incident such as whether he took Mr. Singh out through the van window or door, call the veracity of his testimony into question. His assertion that he found a bag of marijuana in Mr. Singh's pants pocket at the scene, after Mr. Singh and his van had previously been searched, as opposed to Mr. Singh's version that Respondent Chierico found a joint he had hidden in his underwear also seems less than credible.

While Mr. Singh's testimony cannot be credited in its entirety in this case, I do credit his version of his removal from the van. His testimony concerning this portion of the incident,

unlike Respondent Chierico's, has the inherent ring of truth to it and is corroborated in essential parts, by the testimony of the witness, Mr. Milliam. By all accounts, Mr. Singh was completely cooperative with police who initially approached him, questioned him, had him get out of his van, frisked and searched him, searched his van, told him to wait in his car, and returned and took his ID after accusing him of littering. Since Mr. Singh remained completely cooperative throughout all these intrusions on him made by police officers, it does not make sense that he would then "swat" at an officer's face because he told him to stop making movements. The defense suggestion that Mr. Singh's behavior changed because he was suddenly worried he had marijuana in his pocket or in his van does not hold up. He fully cooperated with the initial officers who obviously were looking for marijuana since, as Respondent Whooley testified, his first comment to Mr. Singh when he approached him was to ask him if he had been smoking weed in the car. Mr. Singh did not "swat" at Respondent Whooley who was clearly looking for marijuana. Mr. Singh simply got out of the van when he was told to.

Also, even if Mr. Singh did move his hand in a way that came close to Respondent Chierico's face, it does not credibly follow that Respondent Chierico would then reach into the van to grab Mr. Singh's empty hand instead of just moving away from the hand or calling for back-up or taking other actions which would not have involved the direct physical contact initiated by Respondent Chierico. It also does not seem credible that Mr. Singh would then be trying to pull Respondent Chierico into the van as Respondent Chierico testified. Respondent Chierico's description of these events lacks the ring of truth.

In contrast to Respondent Chierico's version of events that Mr. Singh all of a sudden decided to swat at him, Mr. Singh's version that he had a cell phone in his hand and that this prompted Respondent Chierico into action seems more likely than not to be what happened in

this case. It is also a version that was corroborated by Mr. Milliam who, while perhaps can be seen as embellishing some details of the encounter, described Mr. Singh as holding a cell phone and Respondent Chierico demanding it from him immediately before the physical encounter began. While Mr. Milliam also testified that he did not find a cell phone or cell phone parts on the ground, he indicated that the police had already left the area by the time he looked for the phone. His failure to find the phone at this point does not prove that there was no phone involved in the incident. I find that the CCRB has proven by the preponderance of the credible evidence that Respondent Chierico did damage Mr. Singh's phone and therefore he is Guilty of Specification 5.

With regard to the exact way Mr. Singh landed on the ground, I again credit Mr. Singh's version of what happened. According to Respondent Chierico after this intense struggle to remove Mr. Singh, once he had him outside the van, Mr. Singh became very combative and suddenly just fell to the ground. Again this does not have the ring of truth to it. After such a struggle, it is more likely than not that Respondent Chierico did indeed throw Mr. Singh to the ground as testified to by Mr. Singh. I therefore find that Respondent Chierico is Guilty of Specification 4.

I also find that based on the preponderance of credible evidence in this case, Mr. Singh did not "swat" at Respondent Chierico in this case and therefore Respondent Chierico did not have sufficient legal authority to arrest Mr. Singh for disorderly conduct, which was the charge Respondent testified was the original basis for the arrest. While marijuana was later found on Mr. Singh, and by all accounts Mr. Singh did resist arrest, both of which would have been sufficient bases for his arrest, the resisting occurred in response to the unlawful arrest and the marijuana would not have been found but for the unlawful arrest so neither can be considered to

provide sufficient legal authority for Mr. Chierico's arrest. I therefore find Respondent Chierico Guilty of Specification 6.

PENALTY RECOMMENDATIONS

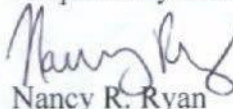
In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent Chierico was appointed on January 10, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. CCRB has requested a penalty of the forfeiture of 30 vacation days as a penalty. As Respondent Chierico was found Guilty of three of the six specifications I recommend a penalty of the forfeiture of 20 vacation days. Respondent Chierico has previously been found Guilty of causing an injury to another person and also has previously been on Level 1 force monitoring. Recent cases involving the unlawful use of force have resulted in penalties of the loss of 15 days vacation time. (2014-12476, 2014-12534, 2014-11562) In the present case, Respondent not only unlawfully used force but also was found guilty of damaging someone's property and arresting him without sufficient legal authority. In a recent case where officers were found guilty of unlawfully arresting someone, a ten-year sergeant, with no prior disciplinary history, forfeited five (5) vacation days, a sixteen-year lieutenant, with one prior adjudication in 2008 for engaging in an off-duty physical altercation, forfeited eight (8) vacation days and an eighteen-year sergeant, with one prior adjudication for striking a handcuffed prisoner, forfeited ten (10) vacation days. (2015-12960, 12962 and 12969)

APPROVED

JAN 26 2017

JAMES P. O'NEILL
POLICE COMMISSIONER

Respectfully submitted,



Nancy R. Ryan
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER PAUL CHIERICO
TAX REGISTRY NO. 936344
DISCIPLINARY CASE NO. 2015-13482

Respondent was appointed to the Department on January 10, 2005. His last three annual evaluations were 4.5 overall ratings of "Highly/Extremely Competent" from 2015 through 2013.

In 2007, he was found guilty of causing physical injury to another person in an off-duty altercation; he was suspended for 13 days and forfeited 25 vacation days for this incident.

From May 29, 2013 to May 29, 2014, he was placed on Level 1 Force Monitoring for having received three or more CCRB complaints in one year.

In his 11 years of service, Respondent has reported sick on 32 occasions, 16 of which were for line-of-duty-injuries. He has been designated Chronic Sick Category "A" on three occasion.

For your consideration.

Nancy R. Ryan
Assistant Deputy Commissioner Trials